United Nations A/HRC/29/28/Add.3

General Assembly

Distr.: General
2 April 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*

Addendum

Identifying emerging approaches and lessons learned in corporate respect for human rights: reflections from discussions held at the 2014 Forum on Business and Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 26/22, considers the kinds of action that business enterprises have taken to meet their corporate responsibility to respect human rights, based on the discussions held during the third annual Forum on Business and Human Rights, which took place from 1 to 3 December 2014. The report focuses on presentations and key lessons from the thematic session entitled "Respect in practice: progress and challenges in implementing the corporate responsibility to respect", which was convened by the Working Group on the issue of human rights and transnational corporations and other business enterprises, and organized jointly with the Global Business Initiative on Human Rights and the Business and Human Rights Resource Centre. The present document is based on the session report prepared by those two organizations in their capacity as joint organizers. In the concluding section, the Working Group highlights observations and recommendations for the consideration of stakeholders.

The purpose of the thematic session was to enable a meaningful multi-stakeholder dialogue about good practices, lessons, challenges, shortfalls, innovations and complexities

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

GE.15-07023 (E)

1507023

Please recycle

relating to the second pillar of the Guiding Principles on Business and Human Rights, which concerns the corporate responsibility to respect human rights.

The present report provides an overview of the presentations and discussions, as well as some key lessons and insights from the session. The aim is to make available to a wider audience the concrete experiences highlighted and lessons identified at the Forum with a view to building common knowledge and supporting further efforts to implement the Guiding Principles.

One part of the session was entitled "Embedding the Guiding Principles in company policies, processes and decision-making". Several business representatives shared the experience of, and lessons from, their company's work to achieve meaningful integration, with reference to some of the key concepts set out in the Guiding Principles. The panel touched upon the engagement of chief executive officers on human rights; upgraded policy commitments; cross-functional involvement; the need for strong investment in internal capacity-building to support horizontal and vertical coherence; methodologies to apply human rights due diligence; embedding human rights considerations into core processes; and enhancing operational grievance mechanisms. Several general observations were drawn from the discussion, including:

- Where company commitment exists, the Guiding Principles are influencing practices and decision-making;
- Some convergence is occurring around foundational building blocks and associated tools and approaches related to implementing the corporate responsibility to respect;
- Putting the basics in place within large organizations takes time, and implementation is an ongoing process;
- There is a communication gap, as companies may not be sharing and discussing the totality of what they do with stakeholders and the public.

The other main part of the session focused on sharing lessons from specific cases of engagement between business and civil society in order to support implementation of the corporate responsibility to respect human rights. The title of that panel was "Applying the Guiding Principles in specific cases: cases of collaboration between civil society organizations and business". It brought together businesses and civil society organizations working collaboratively, though not always in full agreement, to apply the Guiding Principles in specific local or sectoral contexts, and included the following case studies:

- Community relocation in the context of mining in Mozambique (Human Rights Watch and Vale);
- Child labour and women's rights on West African cocoa farms (International Cocoa Initiative, Nestlé and Oxfam);
- Applying global framework agreements on union rights locally through mutual responsibility in the textile sector (Inditex and IndustriALL);
- Privacy and freedom of expression on the Internet (Ranking Digital Rights).

The main lessons of the session included:

- An understanding that the ingredients for successful relationships between non-governmental organizations and business include a shared commitment to improving the situation for affected communities, transparency on both sides, a willingness to find ways to promote ongoing communication in order to improve relationships over time, and the recognition that relationship building is a continual process;

- Relationships between companies and civil society tend to focus on addressing specific human rights issues in specific contexts. There are often good practical reasons for that, and it is not incompatible with the expectation that companies need to be aware at the same time of the full range of human rights impacts across their operations;
- Experience has shown that constructive interaction can lead to specific steps being taken by companies on the ground within a relatively short time;
- Good relationships between companies and non-governmental organizations should enable, not replace, further relationship building, especially with civil society stakeholders at the local level;
- Government engagement is necessary and will help to frame the relationship between non-governmental organizations and business.

Among its key recommendations for the future, the Working Group encourages more companies and non-governmental organizations to publicly share examples of steps taken to implement the second pillar of the Guiding Principles and joint efforts to address challenges in specific situations and contexts, both at the annual Forum and in other settings. Such dialogue and lesson sharing, which should also involve Governments, has great potential for stimulating further learning and spreading innovative engagement between non-governmental organizations and business to prevent and address adverse impacts of business on human rights.

Annex

[English only]

Identifying emerging approaches and lessons learned in corporate respect for human rights: reflections from discussions held at the 2014 Forum on Business and Human Rights

Contents

		Paragraphs	*Page*
I.	Introduction and background	1–7	5
II.	Introductory reflections on the discussion on respect	8–11	6
III.	Examples of companies' efforts to integrate human rights in policies and processes	12–24	7
	A. Introduction	12	7
	B. Policy development and senior management buy-in	13	7
	C. Corporate-wide impact and risk mapping	14	8
	D. Internal human rights training and capacity-building	15	8
	E. Effectiveness of operational-level grievance mechanisms	16–17	9
	F. General observations from the discussion on embedding the Guiding Principles in company policies, processes and decision-making	18–24	9
IV.	Examples of engagement between non-governmental organizations and business to advance implementation of the corporate responsibility to respect human rights	25–62	11
	A. Introduction	25	11
	B. Community relocation in the context of mining in Mozambique	26–35	12
	C. Child labour and women's rights on West African cocoa farms	36–45	14
	D. Applying global framework agreements locally through mutual responsibility in the textile sector	46–51	16
	E. Privacy and freedom of expression on the Internet	52–55	17
	F. Government perspectives	56	18
	G. General observations from the discussion on relationships between civil society organizations and business	57–62	19
V.	Conclusions and recommendations	63–68	20

I. Introduction and background

1. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework clearly establish that all business enterprises have a responsibility to respect human rights. Understanding better what such respect for human rights might entail in terms of practical steps for companies in specific situations would constitute an important contribution to meeting that responsibility. That is the focus of the present report: it seeks to provide examples of action companies have taken, based on discussions held at the third Forum on Business and Human Rights, which was held from 1 to 3 December 2014.

2. Specifically, the report provides an overview of a session held at the Forum entitled "Respect in practice: progress and challenges in implementing the corporate responsibility to respect". The session was convened by the Working Group on the issue of human rights and transnational corporations and other business enterprises, and organized jointly with the Global Business Initiative on Human Rights (GBI) and the Business and Human Rights Resource Centre (BHRRC). The Working Group would like to thank GBI and BHRRC for their collaboration in organizing the session and for having prepared a report containing a detailed summary and analysis of the discussions.[1] The present document is based on that report, and seeks to transmit key lessons and insights to interested parties. In the concluding section, the Working Group highlights observations and recommendations for the consideration of stakeholders.

3. One aspect of the Working Group's mandate is to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles (A/HRC/17/31, annex).[2] The Working Group also has a mandate to guide the annual Forum on Business and Human Rights that was established to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments and in relation to specific rights and groups, as well as identifying good practices.

4. The main themes of the third annual Forum included challenges faced and progress made by companies in integrating the corporate responsibility to respect human rights both in policy and in practice, as well as good practice models for meaningful stakeholder engagement.[3] Accordingly, the "respect in practice" thematic sessions sought to facilitate a multi-stakeholder dialogue about good practices, lessons, challenges, shortfalls, innovations and complexities relating to implementation of the second pillar of the Guiding Principles

---

[1] Available from http://business-humanrights.org/sites/default/files/documents/Respect%20in%20Practice%20Report.pdf.

[2] The Guiding Principles were endorsed by the Human Rights Council in its resolution 17/4. They are the first United Nations-backed framework to define the respective duties and responsibilities of Governments and business enterprises for preventing and addressing adverse human rights impacts arising from business activities. They apply to all States and business enterprises of all sizes and in all sectors and operating contexts.

[3] The other themes were the role of public policy and national action plans, ways to enhance accountability and access to effective remedy for victims of business-related human rights abuse, and the integration of the Guiding Principles in global governance structures.

and the "Protect, Respect and Remedy" Framework, which is the corporate responsibility to respect human rights.[4]

5. The overall aim of reporting on the thematic sessions is to make available to a wider audience concrete experiences and lessons presented at the Forum in order to build common knowledge and support further efforts to implement the Guiding Principles.

6. The Working Group would like to note that the examples highlighted in the present report constitute a limited sample of the practices presented by companies that participated in the Forum and that were willing to share their perspectives in public in a multi-stakeholder setting, which a number of other companies are not yet ready to do. Moreover, the fact that the examples were discussed as part of the thematic discussion on "respect in practice" does not imply any endorsement of them as "good practice", nor of the company overall, its policy or action taken to respect human rights. The primary purpose in discussing the case studies is to facilitate the exchange of experience and mutual learning among business, civil society and Governments.

7. Based on its own assessment, and feedback received from all stakeholder groups, the Working Group would like to facilitate more of that type of focused and action-oriented discussion around specific cases and experiences. In that regard, it commends the companies, non-governmental organizations and States that shared their experiences and perspectives at the Forum.

II. Introductory reflections on the discussion on respect

8. The Working Group acknowledged the key importance of using the annual Forum to explore the complexity of what corporate respect for human rights means in practice, and to involve a diverse range of stakeholders in the discussion. With the support of GBI and BHRRC, the aim was to take an innovative approach by looking both inside companies to understand the policies and systems being put in place, and at the same time, at how business engages with civil society organizations.

9. Inside companies, all actors must appreciate the need to develop robust policies, operating procedures, processes and systems. However, it is also necessary to look at the cultural, "people-side" of respect for human rights, be it the message from the chief executive officer (CEO) or the decision of the manager on the ground, as those two dynamics need to work together to achieve effective and sustained human rights due diligence. The Working Group has consistently highlighted the need for more companies to talk publicly about their systems, which in some instances are highly sophisticated and robust from a human rights perspective, and not just from a business management perspective. For the Working Group, that is imperative in order to ensure that the vast majority of companies that are new to the business and human rights agenda do not have to reinvent the wheel, and also in order to recognize that it is essential to close the gap between "leaders and laggards". A common challenge is that there is often reluctance for

[4] The concept note for the session, which includes further background and the names of panellists, is available from www.ohchr.org/EN/Issues/Business/Forum/Pages/2014ForumParallelUNled.aspx. The Working Group also convened other "good practice" oriented sessions at the Forum in collaboration with other organizations: a panel discussion on meaningful stakeholder engagement in human rights due diligence, and another on supporting and protecting human rights defenders who work on issues of corporate responsibility and accountability. Both provided valuable insights on elements of good practice relating to implementation of the corporate responsibility to respect. Summaries of the discussions are available in the summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim (A/HRC/FBHR/2014/3).

companies to share their approaches and lessons, in part because it is very easy to go from "hero to zero" when things go wrong. Furthermore, good people can make bad decisions, and good systems can sometimes lead to bad outcomes. That reinforces the need to engage with experts and external stakeholders who can support due diligence approaches.

10. Moreover, in exploring the nuts and bolts of corporate respect for human rights in very practical terms, it is not only necessary to address what goes on within companies when putting in place policies and systems, but also how companies engage with affected stakeholders and civil society organizations. While relations with communities and civil society organizations are sometimes tense, they can also be hugely constructive for all parties if approached correctly.

11. Another central aspect relates to the role of Governments, as both business integration and relationships between companies and civil society are influenced by the context, or operating environment, that the Government creates. However, that is also a complex task, meaning that it is key for Governments to learn about what it takes to achieve corporate respect for human rights. Governments need to understand the challenges and concerns of communities, civil society and business in order to be effective in meeting their own duties to protect human rights and ensure access to effective remedy when business interests have adverse impacts on human rights.

III. Examples of companies' efforts to integrate human rights in policies and processes and decision-making

A. Introduction

12. The first panel of the "respect in practice" session was entitled "Embedding the Guiding Principles in company policies, processes and decision-making". The background for the focus of the panel was the benchmark and the standard of conduct established in the Guiding Principles for both States and businesses. For businesses, respect for human rights requires a clear policy commitment to respect human rights, acting with human rights due diligence and engaging in remediation. That is not a check-box exercise. Rather, it requires genuine changes in mindsets, culture and systems, similar to developments in other areas of corporate policy and systems such as health and safety, the fight against corruption and environmental management. Furthermore, the Guiding Principles articulate certain concepts and ideas that are intended to improve the quality and outcomes of corporate action. The panel was therefore composed of several business representatives who shared the experience and lessons of their company's work to achieve meaningful integration, with reference to some of the key concepts set out in the Guiding Principles.

B. Policy development and senior management buy-in

13. The representative of Total S.A. focused on the decade-long journey towards establishing a corporate policy commitment to respect human rights, and the role of CEOs and senior leaders in that process. Some of the following lessons from the process were highlighted, including the need to:

- Demystify human rights for colleagues and be prepared to use operational language;
- Tailor the business case to different internal functions and stakeholders, or in other words, speak about issues that are relevant to them;

- Focus on costs and opportunities: while implementing systems for good due diligence and remediation does cost money, there are always much larger costs when things are not managed and go wrong;
- Take a sectoral approach, which also means working collaboratively with competitors;
- Take an integrated approach by working with existing processes and systems;
- Benchmark through engagement with experts, civil society and peers from diverse industries.

C. Corporate-wide impact and risk mapping

14. The representative of Novo Nordisk shared insights from the company's experiences of conducting corporate-wide human rights impact and risk mapping. Some of the key lessons learned from the process were that:

- Understanding the business context and realities faced by those responsible for carrying out the human rights impact and risk mapping is key. Such internal engagement and effort to understand builds buy-in and ownership;
- Undertaking corporate level due diligence is a good starting point because it allows the company to identify priority areas for deeper due diligence and impact assessments at the local level. That deeper level will probably require different types of internal and external expertise;
- The Guiding Principles helped the company to look at their human rights programmes with fresh eyes and in a more systematic way.

D. Internal human rights training and capacity-building

15. The representative of ABB highlighted some key lessons and challenges regarding efforts to embed human rights in the company through human rights training and capacity-building, including that:

- The leadership mandate from the CEO and senior management for training is key, but ensuring ongoing commitment in the context of stretched resources is a challenge for all businesses;
- Achieving coherence across a group of 140,000 people is very difficult. That becomes even more of a challenge when a company has to consider diverse functions, different business units and membership of business associations;
- Training is necessary, but it is imperative to put the correct processes in place to ensure people make the correct decisions. For example, the need for human rights training for the security function was highlighted, as security officers are also responsible for questions and requirements about human rights when contracting security providers;
- Individuals who have been on training programmes support the company in identifying human rights risks and gaps in company approaches. People who are well trained can become "eyes and ears" on the ground to support overall due diligence efforts.

E. Effectiveness of operational-level grievance mechanisms

16. The representative of the BG Group shed light on experiences and challenges related to the effectiveness criteria for operational-level grievance mechanisms set out in the Guiding Principles, as the company had learned several lessons about issues that can either help or hinder meeting the effectiveness criteria. The lessons learned included:

- Good key performance indicators are critical. It is important to look at trends and not make judgements about effectiveness based on data at one point in time. One common pitfall highlighted was the misperception that few grievances was necessarily an indicator of success;
- The design of the mechanism should be informed by stakeholder engagement, especially with those who may ultimately use the mechanism. That can help with questions of accessibility and cultural appropriateness;
- Addressing budget issues up front is important. In one situation, it was found that lack of internal clarity on who would cover the costs of compensation led to a delay in closing a case. The lesson was to have a budget in place up front which can be used to close off cases and clarify which functions or departments need to be billed for the payment.

17. In the context of insights related to implementation of operational grievance mechanisms, a toolbox and a manual developed by the International Petroleum Industry Environmental Conservation Association (IPIECA) were highlighted. The toolbox includes an awareness pack, template operating procedures, and a diagnostic tool for existing corporate grievance mechanisms.[5] The manual is for site managers and those at corporate level.[6]

F. General observations from the discussion on embedding the Guiding Principles in company policies, processes and decision-making

1. Where company commitment exists, the Guiding Principles are influencing practices and decision making

18. Speakers noted that the endorsement of the Guiding Principles by the Human Rights Council provoked a step-up, or reset, of their human rights commitments and work. Equally importantly, the content of the Guiding Principles has begun to influence the details of implementation. Speakers described instances where the spirit and letter of the Guiding Principles are making their way into policies, practices and processes. The panel touched upon CEO engagement on human rights, upgraded policy commitments, cross-functional involvement, strong investment in internal capacity-building to support horizontal and vertical coherence, methodologies to apply human rights due diligence, embedding human rights considerations into core processes, and enhancing operational grievance mechanisms. Examples of where the Guiding Principles are directly influencing policies and processes include due diligence that looks at all operations and all human rights, as opposed to one function and a sub-set of rights; wording about addressing conflict of laws in codes of conduct; the use of the phrase "cause, contribute and directly linked" when engaging colleagues about the company's impact; and verbatim inclusion of the effectiveness criteria

[5] See www.ipieca.org/publication/community-grievance-mechanisms-toolbox.

[6] See www.ipieca.org/publication/community-grievance-mechanisms-oil-and-gas-industry-manual-implementing-operational-leve

for grievance mechanisms contained in the Guiding Principles in company standards and operating procedures.

2. Some convergence is occurring around foundational building blocks and associated tools and approaches

19. Speakers were invited to address one aspect of their human rights work, as each sector and company establishes an approach to human rights that fits their circumstances. At the same time, it seems that a picture is beginning to emerge about some key foundational building blocks relating to implementing respect for human rights. Speakers presented or referenced tools and resources that have been developed in-house, albeit often with the help of external experts. For example:

- To establish priorities and a road map, some companies are developing in-house Excel and Word tools to map human rights risks at a corporate level. Those tools cover all business processes, the value chain and operational contexts, address the adequacy of current policy and practice, and are based on the Guiding Principles;
- To strengthen internal coherence and commitment to action, some companies are hosting cross-functional meetings and workshops or establishing cross-functional working groups or committees;
- To build capacity and awareness, some companies are publishing internal guides or developing training modules that address basic definitional questions while using examples and operational language relevant to the business;
- To begin to prevent and mitigate adverse human rights impacts, some companies are using a mixture of self-assessments, studies and impact assessments. They can relate to a specific function, a country, an operation or a product or service in the value chain;
- To start thinking about grievance mechanisms, some companies are beginning to develop tools to assess current mechanisms against the effectiveness criteria set out in the Guiding Principles.

3. Putting the basics in place within large organizations takes time, and implementation is an ongoing journey during which things can change and go wrong

20. The session was a reminder of the attention and time it takes for a single company to address one aspect of its human rights programme. Even for companies that are actively engaged and committed to implementing corporate respect for human rights, getting the basics in place across vast entities and value chains takes time. It also seemed clear that even the best tools, processes and systems can be undermined by personnel changes, restructuring and bad decision-making. That is true of every aspect of corporate life and emphasizes the need to build coherence, the correct incentives, robust processes, awareness and culture.

4. Given that companies are acknowledging that it takes time to put in place the necessary components to respect human rights, questions remain regarding the timelines for suppliers to meet expectations

21. The panel noted that assessing whether a supplier or business partner is a good performer or not regarding respect for human rights was rarely a simple process. Certain rights might be very well respected and others not. The decision then becomes about whether to work with the supplier towards improvement, what is non-negotiable in terms of current practice or timetable for corrective action and how to work with the supplier to raise performance. It was acknowledged that a further query that needs to be addressed is what

companies should ask of business partners to substantiate the judgement about their performance regarding human rights.

5. Coherence and endurance are important, as good systems and policies do not mean things cannot go wrong, and the reasons why things go wrong are not necessarily simple

22. In essence, things can go wrong because companies are made up of people and people do not always follow the rules. It was noted that there is not one reason for that. It can be a result of different cultural understandings of a rule or the idea of rules. It can be a function of an incentive structure that does not prioritize certain rules in favour of other objectives. Sometimes people, often a very small number, simply do not want to follow the rules. All of that reinforces the importance of coherence, the correct incentives, robust processes, awareness and culture.

6. There is a communication gap

23. Committed companies may not be sharing and discussing the totality of what they do with stakeholders and the public. A few speakers noted that such reticence often comes from knowledge that there is still much more work to be done. Furthermore, a bad incident or error could render communication of progress and action meaningless, or worse, disingenuous, in the eyes of some stakeholders. At the same time, it is likely that stakeholders could interpret limited communication as reflecting a limited or hollow commitment.

7. Stakeholder engagement is of critical value

24. The discussion highlighted that engagement with stakeholders and rights-holders is a critical success factor for achieving meaningful results for vulnerable groups. One observation was that there are often inherent tensions between the interests of the company and the interests of the community, especially when addressing the issues involves significant costs. It was acknowledged that such tensions can exist, and that in order to avoid them as much as possible, it is imperative that the company has cross-functional buy-in, discusses the issues in depth, and addresses the budgeting and resource question up front.

IV. Examples of engagement between non-governmental organizations and business to advance implementation of the corporate responsibility to respect human rights

A. Introduction

25. The second panel of the session was entitled "Applying the Guiding Principles in specific cases: cases of collaboration between civil society organizations and business". As the Guiding Principles are a means to an end, intended to ensure that the human rights of those impacted by business operations, decisions, omissions and actions are respected and protected, and that remedy is provided in the case of adverse impacts, their implementation is far more than the development or enhancement of policies, processes and management systems. Companies therefore should and need to communicate openly about specific cases and situations, including ones in which they have made progress, but also cases and situations in which mistakes have been made and lessons have been learned. Furthermore, understanding what good quality and meaningful respect looks like in practice is a task that is highly dependent on the specific operating and human rights context; in that regard,

cooperation with civil society organizations is crucial. Moreover, the Guiding Principles themselves include a call for engagement with human rights experts, relevant stakeholders and affected populations as part of due diligence processes. Thus, the panel brought together businesses and civil society organizations working collaboratively, though not always in full agreement, to apply the Guiding Principles in specific local and sectoral contexts.

B. Community relocation in the context of mining in Mozambique

26. The discussion featured a case study on the engagement between the mining company Vale and the international non-governmental organization (NGO) Human Rights Watch in the context of the Moatize mine in Mozambique. In recent years, Human Rights Watch has been engaged in monitoring the impact on local communities of the extractives boom in Mozambique, especially regarding resettlements. According to the presentations at the Forum, between 2006 and 2010, the Moatize mine developed by Vale involved moving 1,365 households that were in close proximity to the project site. The representative of Vale explained that the company had worked closely with local communities on the resettlement, conducting dialogues and consultations, in accordance with company guidelines on respect for human rights. Human Rights Watch conducted research on the resettlements in 2012 and raised concerns about the ability of resettled families to obtain adequate food, water and access to work. Vale and Human Rights Watch engaged in a productive dialogue as Vale worked to address those concerns.

27. The representative of Vale highlighted that the mode of engagement of Human Rights Watch had been key in enabling a constructive relationship. The relationship was seen as a "two-way street", with a strong focus on transparency and being proactive about changes on the ground as early as possible. The following elements of the approach were identified:

- Human Rights Watch demonstrated understanding of how a company works, which was reflected in the initial approach to the president of Vale and in its support of the company's response and action plans;
- From the outset, Human Rights Watch was very transparent about the findings of its research and what it felt the company needed to correct. Human Rights Watch shared its initial findings with Vale;
- Concerning transparency, Human Rights Watch wanted Vale to be proactive from the outset. It was in favour of Vale taking action that would lead to results as early as possible for the families and communities concerned, and for the company;
- The overall spirit of the engagement was not to "name and shame", even though it was made clear that that would be a possible avenue of action if deemed necessary;
- When conducting the investigation, the research methodology of the NGO was thorough and fact-based.

28. The presentation also included an explanation of the immediate steps taken by the company following the initial communication from Human Rights Watch to the president of Vale, including:

- Opening up the records about the resettlement process in question and discussing with Human Rights Watch what had been done, what flaws there were and what mistakes had been made;

- Six weeks after the initial meeting, and on the recommendation of the NGO, Vale convened a 40-person group of its managers in Mozambique to identify lessons learned, which the company recorded as a very positive experience;

- An agreement/memorandum of understanding between Vale and the local authorities was signed. A plan of action containing 42 points relating to water, housing, road maintenance, transportation and income generation was agreed on by the parties. An important aspect of the plan was clarity about the timing of the action. Vale was clear about what could be achieved in the medium and the long term. Managing expectations about what was possible and when was very important;

- Joint follow-up calls to monitor and discuss progress and a meeting in less than a year to review action regarding the resettlement. The sustainability Vice-President of Vale met with Human Rights Watch in New York to reaffirm the company's engagement in the process.

29. The representative of Vale also shared the company's perspective on lessons learned and further steps that were taken after Human Rights Watch released its report in May 2013. The company attended the release in Maputo and participated in dialogues with stakeholders in Mozambique. At that stage, additional points were added to the action plan, including with regard to social dialogue and grievance mechanisms. A key lesson was the need to ensure that all human rights are dealt with in the context of social and environmental impact assessments. Furthermore, the process was seen as being instructive in terms of establishing a clear internal standard for the conduct of resettlement processes, which everyone in the business must apply.

30. A central challenge that was highlighted was the need to address the State's duties, as some of the issues relate to government policies, legal frameworks and actions related to land and resettlement. They involve issues that cannot be solved by one company unilaterally. In addition, the point was highlighted that often, more than one company is involved in the social and human rights impacts that are being felt on the ground.

31. The representative of Human Rights Watch emphasized the fact that it sought to engage with various actors to achieve necessary changes in the context of human rights abuses. With regard to the specific situation in Mozambique, it was noted that the combination of the mining boom and the outdated regulations, as well as the lack of monitoring and oversight over licensing and mining operations, was a recipe for human rights abuses. The NGO had first become involved in the Vale mine in 2012 when it had learned of a protest related to the quality of housing, which had led to the initial investigation.

32. The representative of Human Rights Watch noted that the nature of the response from Vale to its action had been positive in comparison with many other responses to investigations. The response to the initial inquiry had been immediate and Vale had made all the relevant documentation available, and the company's attitude was seen as timely and open. In addition, Human Rights Watch was given significant access to leaders and employees at all levels of the company, from the headquarters in Brazil to offices in Maputo and at the mining operation. That had facilitated the ability of Human Rights Watch to identify the best way forward in terms of recommendations to improve the situation.

33. As part of the engagement, Vale had also been provided with a version of the final report before the launch. Due to the nature of the relationship, it had been possible to reflect the views and actions taken by Vale, even if the purpose of sharing the report had not been to enable the company to propose changes.

34. Like Vale, Human Rights Watch also reported that it found the relationship with Vale to be a positive experience, and that it led to meaningful concrete changes in company action and the situation of the community in Mozambique. The NGO also noted that it was pleased that Vale was determined to integrate lessons learned into policies and practices in other operations. Human Rights Watch hoped that other companies operating in Mozambique would do likewise.

35. Human Rights Watch provided several general reflections, including:

- A number of issues could have been addressed or prevented if better due diligence had been done early on;
- Companies often have good systems in place, but Human Rights Watch finds that they often lack an accurate picture of perspectives on the ground. Sometimes, companies recognize the issues, but fail to accept their gravity;
- While forming relationships with local civil society organizations is critically important, it can be different from working with international NGOs. Often, there is a heightened sense of conflict between local actors and the company, local actors may have access to fewer resources, they can be less sophisticated in their mode of engagement and some can feel excluded from a process. Human Rights Watch urged companies to investigate thoroughly any issues or concerns that came their way, without needing the external push or scrutiny that international NGOs brought. That should also be considered even when management thought it was aware of the situation and even when there were doubts about the credibility of interlocutors.

C. Child labour and women's rights on West African cocoa farms

36. The second case study featured presentations by representatives of Nestlé, Oxfam and the International Cocoa Initiative (ICI) on their engagement in addressing challenges related to child labour and women's rights in the context of cocoa production in West Africa, an issue that has attracted increasing attention from civil society organizations in the past decade.

37. The representative of Nestlé provided some background information on the programme to address child labour in the cocoa industry. In recent years, the yield for cocoa has stagnated for a number of reasons, including the lack of implementation of good agricultural practices, the small size of fields, which limited industrial production, ageing trees, an ageing workforce, as many young people did not want to work in the cocoa fields, and the stagnation in the commodity price coupled with a reduction in prices at the farm level, in part due to high taxation and the number actors/tiers in the supply chain. Furthermore, the situation is characterized by low income for farmers (about US$ 50 per month, or barely above US$ 2 per day) and the high number of children involved in cocoa production. One estimate is that there are 800,000 children working in the cocoa supply chain in Côte d'Ivoire alone.

38. The representative of Nestlé explained that its response was to put in place a programme consisting of three pillars, the first seeking to increase farmers' profits, the second focused on the social conditions in the supply chain and the third seeking to ensure resilience in the cocoa supply chain in order to meet production needs.

39. In order to address the issue of social conditions, Nestlé entered into a partnership with the Fair Labor Association in 2011 to conduct a baseline analysis of the prevalence of child labour in the cocoa supply chain, which resulted in 11 recommendations from the Fair Labor Association. Nestlé adopted all the recommendations, including the one to establish the Child Labour Monitoring and Remediation System, which was supported by ICI. The

system sought to address policies and practices in all the tiers of the supply chain, from local growers to cooperatives and tier-one suppliers to Nestlé. By the end of November 2014, some 16 cooperatives had implemented the system. The aim is to have the system implemented by all Nestlé Cocoa Plan cooperatives by 2016. With the support of ICI, Nestlé conducted training for company employees, including agronomists, who can now identify cases of child labour, and with external actors such as farmers and cooperative owners. A key finding was that the system identifies more cases of concern than those identified under the certification scheme audits. In fact, about 3,000 instances of child labour were found that were linked to certified cooperatives.

40. The collaboration with the Fair Labor Association and ICI was seen as crucial by Nestlé with respect to its efforts to address child labour. Civil society organizations have the necessary expertise, credibility and capacity to implement programmes and audits. It was also important to try and engage with the Government in order to coordinate programmes.

41. It was noted that activities related to child labour were part of the overall programme on human rights due diligence. The Guiding Principles had been critical in informing the design of the programme and in clarifying the responsibility of the company to use leverage in addressing the problem of child labour in the supply chain.

42. The representative of ICI, a multi-stakeholder coalition that aimed to bring about sector-wide change to protect children in the cocoa industry, noted that a key aspect of its work was building the capacity of a range of actors in the supply chain, including Nestlé, and engaging communities and Governments in producing countries. Among the insights ICI had identified with regard to making valuable changes on the ground through collaboration with multiple actors, the following were emphasized:

- It is necessary to recognize that identifying child labour is a complex issue. It is not easy to walk onto a farm and spot which cases constitute child labour and which do not. Consideration should be given to time of day, the nature of the work and the age of the child, which is not always easy to determine;
- Building on existing capacity makes sense. Since cooperatives in the supply chain are institutions with management capability and structures, working through them is necessary;
- Real remediation, not policing, is critical. Arriving on a farm and simply pinpointing child labour silences dialogue and pushes the issue under the surface. Farmers and children need good alternatives that work;
- Innovation can help spread knowledge and good practices, such as in the case of a smartphone application implemented by ICI that allows data to be gathered in order to inform decisions taken by cooperatives.

43. The representative of Oxfam explained that its engagement with Nestlé and other companies in the sector took place in part through the "Behind the Brands" campaign, which ranks and scores 10 food and beverage companies in seven areas: land access and rights, women's rights, support to farmers, workers' rights, mitigation of climate impacts, transparency at corporate level, and water use and impacts as well as access to water. Issues and lessons highlighted from engagement through that initiative included:

- It is not just about the relationship between Oxfam and the brands. It is also a dialogue in which Oxfam has tried to involve the public;
- It is not easy to engage all 10 companies on all seven areas. Companies are often more comfortable or confident addressing some issues rather than others;

- Oxfam found that it is effective to use reports and campaigns to highlight specific issues that require more attention, in its opinion;
- Oxfam does not set out to blindside companies. Before going public with reports, it gives the company or companies concerned the opportunity to comment and understand Oxfam's demands.

44. A particular focus for Oxfam's work on the cocoa supply chains was the issue of women's inequality, and the double aspect of recognizing the need to protect women's rights and addressing inequality as a means to tackle child labour. As women make up 43 per cent of the workforce in the world's agricultural sector, and investments in family health care, children's education and food tends to be the concern of women, it was noted that increased income and opportunities for women in the supply chain can address the root causes of child labour.

45. With regard to engaging Nestlé, Oxfam explained that research conducted in 2013 had highlighted the issue of women's rights in the cocoa supply chain. The process had involved engaging Nestlé and others both privately and publicly, and shortly after the public campaign, Nestlé had agreed to all of the requests made. After engagement between Oxfam and Nestlé, as well as Mars and Mondelēz, a road map to address the issues had been agreed on, and Oxfam had continued the engagement with those companies in order to evaluate the progress on the road map.

D. Applying global framework agreements locally through mutual responsibility in the textile sector

46. The third case study included presentations by representatives of Inditex and the global union federation IndustriALL on the implementation of a global framework agreement covering the 6,000 factories that supplied Inditex. Inditex, which manufactures close to 1 billion garments per year, involving some 1 million workers in 40 different countries, signed an agreement with IndustriALL in 2007, which was renewed in 2014, to promote decent working conditions in supplier factories worldwide. The agreement emphasizes the importance of freedom of association and collective bargaining, enabling workers to monitor and enforce their rights. The agreement is underpinned by the Inditex code of conduct, which sets out a commitment by the company that includes requirements for zero tolerance of forced and child labour, the guarantee of a living wage and other core labour rights.

47. The representative of Inditex highlighted the commercial benefits of that arrangement, and its importance to the expression of the company's values of creating prosperity and being transparent in its operations. All suppliers were bound by social and environmental responsibility guidelines, but the approach was not only about compliance, but rather multilateral cooperation involving trade unions, NGOs, the International Labour Organization and local industries to engage directly with supplier factories.

48. The representative of IndustriALL explained how the policy framework had come into being, starting with a series of unilateral commitments, codes and approaches to implementation by Inditex in 2002. That had led in 2007 to the signing by both parties of a global framework agreement, which had been the first such agreement in the garment sector.[7] In 2012, Inditex and IndustriALL had signed a protocol on trade union rights. The

[7] There are now 42 such agreements in diverse sectors. It was noted that the Accord on Fire and Building Safety in Bangladesh, which includes a legally binding agreement between 190 brands, had been the result of the promotion of such arrangements.

protocol established the role of trade unions in the implementation of the agreement. In 2014, the agreement was renewed.

49. With regard to the application of the global framework agreement, by 2013, some 3,500 factories were taking steps related to trade union rights. Other activities included country-level follow-up plans; trade union visits to a number of factories; a pilot project in Turkey involving elected workers' representatives, trade union leaders and managers from factories; conflict resolution in Bangladesh, Cambodia and Peru; and a project to create factory health and safety committees in Bangladesh.

50. Commenting on the effectiveness of the model for engagement, the representative of IndustriALL observed that local trade unions need to be involved. That means engaging in bargaining, discussions and factory visits. The role of unions is not just to address grievances or complaints, but also to prevent problems and address the root causes of labour rights abuses. The representative of IndustriALL also stressed the importance of recognizing the move from unilateral corporate commitments to joint responsibility based on mutual and contractual commitments between actors. Joint responsibility also needed to be about broadening application and spreading the experience to others in the sector.

51. One lesson identified was the need to establish legally binding agreements at the local level so that mutual responsibility exists. The Guiding Principles on Business and Human Rights, which require companies to look at all human rights, had been taken into account in the development of the framework agreement, which now includes the concepts from the Guiding Principles of prevention, correction and remediation. The focus on union rights was also a necessity, given the capacity of the union federation. At the local level, the first challenge is often to get managers to speak with trade unions, which can lead to addressing a whole range of rights concerns.

E. Privacy and freedom of expression on the Internet

52. The following case study was presented by the NGO Ranking Digital Rights and featured its engagement with Microsoft to strengthen protection of the right to privacy and freedom of expression for Internet users.[5] The specific human rights issue in question focused on how telecommunications companies providing web and voice services over the Internet respect the freedom of expression and privacy of users. That is a concern worldwide, and is often characterized by a situation in which companies are stuck between demands from a Government and the concerns of a company's users or customers.

53. The presentation highlighted how the relationship between civil society organizations and business on that particular issue had evolved from one of public confrontation to shared learning, dialogue and problem solving, as described in the following four phases:

- Online criticism of the sector: In January 2006, Microsoft had its first experience with the issue when a story surfaced about Microsoft deleting a blog of a Chinese activist. After investigation, it transpired that the deletion had allegedly followed a telephone call from a government official and was a result of action taken by a local Microsoft partner. That was happening at the same time as Yahoo! and Google were involved in related freedom of expression and privacy issues in China. In 2006, the

[5] Microsoft was also scheduled to join the discussion, but had to cancel. However, Microsoft encouraged Ranking Digital Rights to proceed alone, thus giving a clear indication of the level of trust and dialogue that exists between the two entities.

status of the relationship between companies and civil society effectively amounted to yelling at each other over the so-called "blogosphere";

- Interaction in the United States of America: In 2006, a high-ranking member of the United States Congress called attention to those cases and in effect claimed that the companies were morally deficient for allowing such things to happen. At that time, there were opposing views, with many arguing that companies should pull out from markets where they faced such requirements, whereas the companies argued that their presence was a good thing as it could foster development and respect for various rights where they operated;

- A discussion about subtleties: Around the same time, some individuals and organizations within civil society started asking more subtle questions such as: If a company is going to do business in that market, how will it do business? What will or should a company do to be responsible? Were the requests to take down user information or data linked to a legal process? Does Microsoft, and do others, have a process in place to evaluate requests or evaluate local partners?

- Multi-stakeholder agreement on principles and monitoring: In 2008, the Global Network Initiative was founded based on the principles of freedom of expression and privacy. A number of companies, human rights organizations, investors and academics joined the process to agree guidelines, monitor their implementation and support transparency regarding company practices.

54. Further insights were shared in relation to Microsoft's purchase of Skype in 2011, at which time Skype's Chinese joint venture had been exposed as allegedly enabling government surveillance and censorship. Working in close consultation with the civil society and academic members of the Global Network Initiative, Microsoft ended Skype's original joint venture and found a new local partner that allowed Microsoft to maintain control over Skype's security and communications.

55. One of the key lessons that was noted from the evolving relationship between civil society and business was the importance of recognizing that both sides learned from the engagement. Another key lesson learned for everyone was that decisions were not straight forward. For civil society organizations engaged in the Global Network Initiative, an important lesson learned was that companies are often faced with a range of sub-optimal choices. In that regard, a mature relationship between civil society and business could play a role in supporting the company to make the least bad choice, and to be open about that fact.

F. Government perspectives

56. Representatives of Governments speaking at the session[9] emphasized the value of hearing practical examples of companies and civil society working together. Some observations included the need for both sides to learn in the process and putting in place long-term changes that were sector-wide. With regard to the role that Governments could play, it was noted that Governments could encourage and reinforce partnerships, and also play an active role in facilitating or participating in multi-stakeholder platforms. Moreover, Governments could also support good practices through their own relationships with business, such as when purchasing goods or services, enact legislation, and develop

[9] The panel included representatives from the Governments of Colombia and the United Kingdom of Great Britain and Northern Ireland.

national action plans on business and human rights, ensuring that both business and civil society were engaged in the consultation process.

G. General observations from the discussion on relationships between civil society organizations and business

1. There are some common ingredients for successful relationships

57. Based on the presentations by the panel speakers, certain elements that seem essential for meaningful and constructive engagement between companies and civil society were elicited. For example:

- Shared commitment to improved results for rights-holders;
- Two-way transparency, including the company providing open access to documentation and civil society not blindsiding the company;
- Formalizing relationships through open letters, memorandums of understanding, work plans and even binding or contractual arrangements supports clarity and mutual accountability;
- Making the relationship institutional as opposed to between a few people only, such as the NGO and someone in the company's corporate social responsibility department. That includes meetings involving individuals at company and NGO headquarters, in the country concerned and at a local or operational level;
- All parties must expect to learn, including being prepared to take on new data, and to change perspectives and mindsets, even when they feel they start with a large amount of knowledge and insight.

2. Grounding the interaction and relationship in the company's responsibility to respect can be productive

58. From the examples shared, it appears that meaningful relationships include a mutual interest in enhancing the company's ability to meet its responsibility to respect, as defined in the Guiding Principles. That is distinct from companies closing off genuine policy and practice changes, or civil society using scrutiny or knowledge of a company with the main aim of influencing the action of others, such as Governments or investors. When civil society proposals dovetail with some level of existing company commitment and know-how, it seems to maximise the chances of successful relationships.

3. Relationships between companies and civil society seem to be focused on addressing specific rights in specific contexts with specific individuals or groups in mind

59. The relationships discussed seemed to relate to the particular mission, agenda, skill set and experiences of the civil society organization. In every example shared, the civil society organization is a recognized leader in achieving policy and practice change on the issue in question. Given the highly significant and severe risks for the company or industry in question, the company itself usually has a level of knowledge and experience, but sees the need to go further in its efforts to respect rights related to, for example, land in the mining industry, trade union rights in the textiles sector, child labour in agriculture and freedom of expression and privacy in the information and communications technology industry. While it is important to bear in mind that the Guiding Principles indicate that companies have a responsibility to respect all human rights, in evaluating partnerships in that regard, two elements come to light. Firstly, the activities linked to the relationship are rarely the sum total of a company's efforts to meet its responsibility to respect human

rights. Secondly, addressing some rights in great depth can enable the protection and respect of others rights, such as when tackling inequality for women in the cocoa supply chain helps eliminate child labour and when other rights are indirectly upheld when trade union rights are protected.

4. Timing and timeframes matter, and not everything takes a long time

60. It is notable that in the examples involving a report from civil society, the company in question acted very quickly and constructively; sometimes meetings took place within one week and action plans were in place within one month. Importantly, that may be because the civil society group provided a window of opportunity for the company to input and engage before reports were released. Establishing timeframes for action such as implementing commitments, taking next steps and publishing reports is important. Several speakers noted that managing expectations is necessary. For example, it helps if actors are realistic and clear about what is possible by when, ideally with a short, medium and long-term division of action.

5. Good relationships should enable, not replace, further relationship building, especially at the local level

61. Many speakers emphasized that, while international civil society organizations have particular strengths from which companies can benefit, relationships between corporations and international NGOs should not replace engagement with local stakeholders and rights-holders. Moreover, as one speaker noted, relationships with local actors can often be more conflict-ridden or politically complex. A key positive feature of all the examples shared was that the relationship between companies and civil society actively encouraged and supported engagement with other actors. That includes local actors such as local trade unions and affected populations, but it also includes other international NGOs, academic experts, competitors and even consumers and the public, as is the case in the Behind the Brands campaign. At all levels, open and honest communication is a key ingredient for successful engagement between companies and NGOs.

6. Without government engagement, partnerships between companies and NGOs to support the corporate responsibility to respect will be limited in their ability to address the human rights impacts associated with business

62. Ultimately, partnerships between diverse private actors, both business and civil society, are always at some level trying to fill a governance gap due to a failure of the State to meet its duty to protect, owing to lack of political will or capacity. That suggests that more of those relationships need to include Governments around the negotiating table in order to sustain, widen and foster progress.

V. Conclusions and recommendations

63. **While all stakeholders recognize that there is still more work to be done, given that a large part of the business community worldwide remains unaware of its human rights responsibilities, discussions at the Forum highlighted that there is much commitment and innovative learning on which to build.**

64. **The Forum discussions also highlighted that the Guiding Principles are influencing practices and decision-making in some companies and are also informing the development of new tools and approaches relating to the corporate responsibility to respect. The Working Group welcomes the development of such tools, both in-house and through collaborative efforts, such as through industry associations, and**

remains committed to working with business actors and other stakeholders to support such efforts. The Working Group is also committed to facilitating multi-stakeholder dialogue on questions that need further clarification and to ensuring that all efforts are consistent with the Guiding Principles.

65. The Working Group recognizes the importance of addressing the gap that has been identified in communication about what companies are doing to implement the Guiding Principles. All stakeholders have a role to play to overcome the reluctance by companies to share information on the steps being taken to avoid and address human rights abuses in their operations. The annual Forum should serve as a space for companies and business associations to share practice and experience and to engage in a constructive dialogue with other stakeholder groups.

66. The Working Group welcomes the innovative and constructive contributions of the companies and NGOs that shared their experiences of joint engagement to address specific human rights concerns in the context of the companies' operations. One challenge in the future will be to explore how such approaches can spread to other companies, and not just to the few most visible global brands. The Working Group considers that the kinds of engagement that were featured at the Forum, focused as they were on finding solutions and improving situations in local contexts, should be emulated to a much greater extent. Often such constructive engagement may arise from investigative efforts by civil society organizations to shed light on human rights concerns and negative impacts, but where companies are willing to engage with NGOs on such findings, it is clear that all parties stand to gain. When there is genuine engagement from both sides, significant progress can be made in preventing and addressing human rights impacts of business activities. At the same time, where companies are not willing to engage with civil society and affected stakeholders in addressing concerns, the traditional approaches of "naming and shaming" and litigation may be seen as the only available avenues.

67. In order to encourage further learning and the spread of innovative engagement between NGOs and business on business and human rights, the Working Group would like to encourage NGOs and companies to share more examples of joint efforts undertaken in specific cases at future sessions of the Forum. The Working Group calls in particular on Governments to join the discussions and encourages both relevant host and home States to participate in panel discussions similar to the one on engagement between NGOs and companies held at the third annual Forum. Moreover, the Working Group encourages the sharing of such examples and dialogue on lessons learned in other relevant contexts, such as at regional forums and meetings convened by stakeholders themselves.

68. Highlighting existing practices of both company efforts to meet the business responsibility to respect, and of joint stakeholder engagement to deal with concrete cases, should be supported by all stakeholders in order to encourage further action and the small but important steps towards workable solutions that ultimately benefit rights-holders on the ground.